

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TERESA CARVALHO,

Plaintiff,

vs.

Case No.: 04-cv-11832PBS

EXPERIAN INFORMATION
SOLUTIONS, INC.,

Defendant.

FILED
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2004 OCT 26 A 11:48
U.S. DISTRICT COURT
DISTRICT OF MASS.

**ANSWER AND AFFIRMATIVE DEFENSES OF EXPERIAN INFORMATION
SOLUTIONS, INC.**

NOW COMES defendant Experian Information Solutions, Inc. ("Experian"), by its undersigned counsel, Jones Day, and in answer to the Complaint, states as follows:

All allegations, declarations, claims or assertions of Plaintiff's Complaint that are not specifically admitted are denied.

PRELIMINARY STATEMENT

1. In response to paragraph 1 of the Complaint, Experian admits that Plaintiff purports to bring this civil action against Experian, and denies that Experian possesses any liability whatsoever to Plaintiff or that Plaintiff is entitled to damages or relief of any kind from or against Experian.

JURISDICTION AND VENUE

2. In response to paragraph 2 of the Complaint, Experian admits that Plaintiff purports to bring this action pursuant to § 28 U.S.C. 1331 and 15 U.S.C. § 1681p and states that this is a legal conclusion to which no response is required.
3. In response to paragraph 3 of the Complaint, Experian admits that the Plaintiff purports to bring this action pursuant to the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq. ("FRCA") seeking actual, statutory, and punitive damages, injunctive relief, costs, and potential attorneys' fees. Experian denies that it possesses any liability whatsoever to Plaintiff or that Plaintiff is entitled to damages or relief of any kind from or against Experian.

PARTIES

4. In response to paragraph 4 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.
5. In response to paragraph 5, Experian admits that it is a consumer reporting agency as defined by 15 U.S.C. § 1681a(f), and states that it is an Ohio corporation, with its principal place of business in Costa Mesa, California, and that it is qualified to do business and does conduct business within the State of Massachusetts.
6. In response to paragraph 6 of the Complaint, Experian admits that venue is proper in this district.

TRIAL BY JURY

7. In response to paragraph 7 of the Complaint, Experian admits that Plaintiff has requested a trial by jury and states that this is a legal conclusion to which no response is required.

FACTUAL ALLEGATIONS

8. In response to paragraph 8 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein, except admits that Experian is a consumer reporting agency as defined by 15 U.S.C. § 1681a(f) and, as such, issues consumer reports as defined by 15 U.S.C. § 1681a(d).
9. In response to paragraph 9 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
10. In response to paragraph 10 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein, except admits that Experian is a consumer reporting agency as defined by 15 U.S.C. § 1681a(f) and, as such, issues consumer reports as defined by 15 U.S.C. § 1681a(d).
11. In response to paragraph 11 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
12. In response to paragraph 12 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
13. In response to paragraph 13 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

14. In response to paragraph 14 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.
15. In response to paragraph 15 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
16. In response to paragraph 16 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
17. In response to paragraph 17 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
18. In response to paragraph 18 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
19. In response to paragraph 19 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
20. In response to paragraph 20 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
21. In response to paragraph 21 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
22. In response to paragraph 22 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
23. In response to paragraph 23 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.

24. In response to paragraph 24 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
25. In response to paragraph 25 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
26. In response to paragraph 26 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
27. In response to paragraph 27 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
28. In response to paragraph 28 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
29. In response to paragraph 29 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
30. In response to paragraph 30 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
31. In response to paragraph 31 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
32. In response to paragraph 32 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
33. In response to paragraph 33 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
34. In response to paragraph 34 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.

35. In response to paragraph 35 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
36. In response to paragraph 36 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.
37. In response to paragraph 37 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.
38. In response to paragraph 38 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.
39. In response to paragraph 39 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
40. In response to paragraph 40 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
41. In response to paragraph 41 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
42. In response to paragraph 42 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.

43. In response to paragraph 43 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
44. In response to paragraph 44 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.
45. In response to paragraph 45 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
46. In response to paragraph 46 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.
47. In response to paragraph 47 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.
48. In response to paragraph 48 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.
49. In response to paragraph 49 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein

and, on that basis, denies, generally and specifically, each and every allegation contained therein.

50. In response to paragraph 50 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.

51. In response to paragraph 51 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.

52. In response to paragraph 52 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.

53. In response to paragraph 53 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.

54. In response to paragraph 54 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.

55. In response to paragraph 55 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.

56. In response to paragraph 56 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.

57. In response to paragraph 57 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.

COUNT I - VIOLATION OF THE FAIR CREDIT REPORTING ACT, SECTION 603 (15 U.S.C. § 1681a)

58. In response to paragraph 58 of the Complaint, Experian restates and reincorporates its responses to paragraphs 1 through 57 as though fully set forth herein.

59. In response to paragraph 59 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.

**COUNT II - VIOLATION OF THE FAIR CREDIT REPORTING ACT, SECTION 607
(15 U.S.C. § 1681e)**

60. In response to paragraph 60 of the Complaint, Experian restates and reincorporates its responses to paragraphs 1 through 59 as though fully set forth herein.
61. In response to paragraph 61 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
62. In response to paragraph 62 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
63. In response to paragraph 63 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
64. In response to paragraph 64 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
65. In response to paragraph 65 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
66. In response to paragraph 66 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
67. In response to paragraph 67 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.

**COUNT III- VIOLATION OF THE FAIR CREDIT REPORTING ACT, SECTION 609
(15 U.S.C. § 1681g)**

- 68. In response to paragraph 68 of the Complaint, Experian restates and reincorporates its responses to paragraphs 1 through 67 as though fully set forth herein.
- 69. In response to paragraph 69 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
- 70. In response to paragraph 70 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
- 71. In response to paragraph 71 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
- 72. In response to paragraph 72 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.

**COUNT IV- VIOLATION OF THE FAIR CREDIT REPORTING ACT, SECTION 610
(15 U.S.C. § 1681h)**

- 73. In response to paragraph 73 of the Complaint, Experian restates and reincorporates its responses to paragraphs 1 through 72 as though fully set forth herein.
- 74. In response to paragraph 74 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.

**COUNT V- VIOLATION OF THE FAIR CREDIT REPORTING ACT, SECTION 611
(15 U.S.C. § 1681i)**

- 75. In response to paragraph 75 of the Complaint, Experian restates and reincorporates its responses to paragraphs 1 through 74 as though fully set forth herein.
- 76. In response to paragraph 76 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.

77. In response to paragraph 77 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
78. In response to paragraph 78 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
79. In response to paragraph 79 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.

**COUNT VI- VIOLATION OF THE FAIR CREDIT REPORTING ACT, SECTION 616
(15 U.S.C. § 1681n)**

80. In response to paragraph 80 of the Complaint, Experian restates and reincorporates its responses to paragraphs 1 through 79 as though fully set forth herein.
81. In response to paragraph 81 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.
82. In response to paragraph 82 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.

**COUNT VII- VIOLATION OF THE FAIR CREDIT REPORTING ACT, SECTION 617
(15 U.S.C. § 1681o)**

83. In response to paragraph 83 of the Complaint, Experian restates and reincorporates its responses to paragraphs 1 through 82 as though fully set forth herein.
84. In response to paragraph 84 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.

COUNT VIII - DEFAMATION

85. In response to paragraph 85 of the Complaint, Experian restates and reincorporates its responses to paragraphs 1 through 84 as though fully set forth herein.
86. In response to paragraph 86 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.

87. In response to paragraph 87 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.

COUNT IX - LOSS OF OPPORTUNITY

88. In response to paragraph 88 of the Complaint, Experian restates and reincorporates its responses to paragraphs 1 through 87 as though fully set forth herein.
89. In response to paragraph 89 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.

FIRST AFFIRMATIVE DEFENSE

(FAILURE TO STATE A CLAIM)

The Complaint herein, and each cause of action thereof, fails to set forth facts sufficient to state a claim upon which relief may be granted against Experian and further fails to state facts sufficient to entitle Plaintiff to the relief sought, or to any other relief whatsoever from Experian.

SECOND AFFIRMATIVE DEFENSE

(IMMUNITY)

All claims against Experian are barred by the qualified immunity of 15 U.S.C. § 1681h(e).

THIRD AFFIRMATIVE DEFENSE

(TRUTH/ACCURACY OF INFORMATION)

All claims against Experian are barred because all information Experian communicated to any third person regarding Plaintiff was true.

FOURTH AFFIRMATIVE DEFENSE

(INDEMNIFICATION)

Experian is informed and believes and thereon alleges that any purported damages allegedly suffered by Plaintiff are the results of the acts or omissions of third persons over whom Experian had neither control nor responsibility.

FIFTH AFFIRMATIVE DEFENSE

(FAILURE TO MITIGATE DAMAGES)

Plaintiff has failed to mitigate his damages.

SIXTH AFFIRMATIVE DEFENSE

(LACHES)

The Complaint and each claim for relief therein is barred by laches.

SEVENTH AFFIRMATIVE DEFENSE

(CONTRIBUTORY/COMPARATIVE FAULT)

Experian is informed and believes and thereon alleges that any alleged damages sustained by Plaintiff were, at least in part, caused by the actions of Plaintiff himself and resulted from Plaintiff's own negligence which equaled or exceeded any alleged negligence or wrongdoing by Experian.

EIGHTH AFFIRMATIVE DEFENSE

(ESTOPPEL)

Any damages which Plaintiff may have suffered, which Experian continues to deny, were the direct and proximate result of the conduct of Plaintiff. Therefore, Plaintiff is estopped and barred from recovery of any damages.

NINTH AFFIRMATIVE DEFENSE

(STATUTE OF LIMITATIONS)

Experian is informed and believes and thereon alleges that all claims for relief in the Complaint are barred by the applicable statutes of limitation, including but not limited to 15 U.S.C. § 1681p.

TENTH AFFIRMATIVE DEFENSE

(UNCLEAN HANDS)

The Complaint, and each claim for relief therein that seeks equitable relief, is barred by the doctrine of unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

(PRIVILEGE)

All claims against Experian are barred because Experian communicated all information in the bona fide performance of a duty or interest to persons with a corresponding duty or interest.

TWELFTH AFFIRMATIVE DEFENSE

(RIGHT TO ASSERT ADDITIONAL DEFENSES)

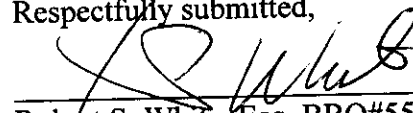
Experian reserves the right to assert additional affirmative defenses as such time and to such extent as warranted by discovery and the factual developments in this case.

WHEREFORE, Defendant Experian Information Solutions, Inc. prays as follows:

- (1) That Plaintiff take nothing by virtue of the Complaint herein and that this action be dismissed in its entirety;
- (2) For costs of suit and attorneys' fees herein incurred; and
- (3) For such other and further relief as the Court may deem just and proper.

Dated: October 26, 2004

Respectfully submitted,



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- and -

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Counsel for Defendant
EXPERIAN INFORMATION SOLUTIONS, INC.

CERTIFICATE OF SERVICE

I, Robert S. White, hereby certify that on October 26, 2004, a true and correct copy of
DEFENDANT EXPERIAN INFORMATION SOLUTION, INC.'S ANSWER AND
AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT was sent to:

VIA FEDEX:

Teresa Carvalho
346 Buffinton Street
Somerset, MA 02726
Tel: (508) 676-9763


Robert S. White